IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.8.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

A.S.No.237 of 1997
and
C.M.P.Nos.2685 & 12544 of 1997

The Land Acquisition Officer
(Sub Collector), Coonoor. ... Appellant.

vs.

1. Pappammal
2. Sickiammal
3. Mayanan
4. Jagadheeswariammal
5. N.Thoppan
6. Muthusamy
7. Rukmaniammal
8. Kanniammal
9. Abdul Muthalif
10. Manickam
11. Muthusamy
12. Mallan
13. Subramani
14. Ranganathan
15. Rangappan
16. Palanisamy Gounder
17. Kempan
18. Ange Gowder
19. Chinnasamy
20. Kasim Sait
21. Ahmed Sait
22. Ali Sait
23. Vijayan
24. Karpakam
25. Ravi
26. Nilgiri District Co-operative Milk
Producers' Union, Udhagamandalam. ... Respondents.

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Appeal filed against the order dated 9.5.1996 in L.A.O.P. No.13 of 1989 on the file of District Judge, Uthagamandalam.

For appellant	:	Mr.V.Ravi,AGP
For respondents	:	Mr.S.K.Raghunathan, for R20 to 22. M/s.G.Muniratnam & Baskarapandian for R26 No appearance – for others.

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

The appeal is preferred by the Government against the order of the learned District Judge, Udhagamandalam in LAOP. No.13 of 1989, dated 9.5.1996.

2.1. The lands of an extent of 11.32 acres situated in Survey Nos.1106/4A3, 1106/4B1, 1106/4C2 of Udhagamandamam were acquired by the Government for housing a Dairy Complex at Udhagamandalam. The notification under Section 4(1) of the Land Acquisition Act, 1894 was gazetted on 15.12.1980.

2.2. The Land Acquisition Officer passed an award fixing the market value of the acquired land at Rs.50,000/- per acre. Not accepting the compensation awarded by the Land Acquisition Officer, the claimants sought for reference under Section 18 of the Act for enhancement.

2.3. The Sub Court, Udhagamandalam, by order dated 26.9.1983 in O.P.No.38 of 1981, after considering the evidence, both oral and documentary, awarded compensation at the rate of Rs.5 lakhs per acre to the claimants, Kasim Sait, Ahmed Sait, Ali Sait, who are arrayed as respondents 20 to 22 herein. In so far as other claimants are concerned, the Sub Court did not grant any relief.

2.4. Aggrieved by the order of the Sub Court, the Government filed an appeal before this Court in A.S.No.388 of 1994 and this Court, by judgment dated 11.8.1988, set aside the award passed by the Sub Court and remanded the matter for fresh disposal. Accordingly, the matter was taken on file by the District Court, Udhagamandalam and renumbered as L.A.O.P.No.13 of 1989. The District Court, Udhagamandalam (for short, "the Reference Court"), by judgment dated 9.5.1996, fixed the amount of compensation at Rs.2,40,000/- per acre besides awarding compensation for trees and crops standing therein. Questioning the same, the Government has preferred the present appeal.

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3. It is not in dispute that the lands in question were acquired for housing a Dairy Complex at Udhagamandalam and the claimants have not filed any appeal against the judgment of the Reference Court fixing the compensation at Rs.2,40,000/- per acre. It is the Government which has come forward with this appeal questioning the quantum.

4. The point for consideration that arises in this appeal is whether the Reference Court is justified in awarding a sum of Rs.2,40,000/- as compensation in respect of the lands acquired.

5. It is seen that the Land Acquisition Officer took into consideration 20 sale deeds, besides, the five sale deeds produced by the claimants. On the basis of the sale deed dated 18.9.1978, which is found as Item No.8 in the list of documents filed by the appellant, the Land Acquisition Officer fixed the market value at Rs.50,000/- per acre.

6.1. Before the Reference Court, several instances of sales were pressed into by both the parties. The claimants filed six documents, viz., Exs.A-1 to A-7, whereas the Government filed 38 documents, viz., Exs.B-1 to B-38.

6.2. The Reference Court rejected the sale deeds filed by the claimants on the ground that they related to the purchase of lands as well as buildings and the lands sold were of small extent. Out of 20 documents produced by the Government, as found in the list enclosed in the typed-set of papers, the reference Court took into consideration only two sale deeds, namely, Item Nos.8 and 20.

6.3. It is true that the sale deed in Item No.8 (Ex.B-2) was the basis for the Land Acquisition Officer to fix the compensation at Rs.50,000/- per acre, however, the Reference Court disagreed with the market value as found in Ex.B-2 on the ground that the sale consideration was fixed at a lower price since the purchaser happened to be a cultivating tenant as also a servant to the seller. The Reference Court took into account the sale deed in Item No.20 dated 23.3.1979 and came to the conclusion that the lands acquired would fetch a sum of Rs.3 lakhs per acre. Considering the sale deed in Item No.20 as well as the sale deed in Ex.B-8, the Reference Court fixed the amount of compensation at Rs.2,40,000/- per acre.

7. Mr.V.Ravi, learned Additional Government Pleader assailed the award of the Reference Court saying that the Reference Court, in spite of the directions of this Court in the earlier appeal to fix the market value of the lands as per Rules, fixed the amount of compensation arbitrarily at Rs.2,40,000/-. According to him, when the Reference Court relied on the

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sale deed in Ex.B-2, it should have taken the value mentioned therein and instead, the Reference Court on the basis of assumption arrived the market value at about Rs.3 lakhs per acre and ultimately fixed the compensation at Rs.2,40,000/- per acre. He further contended that the Reference Court has not properly considered the sale deeds produced by the Government.

8. On the other hand, sustaining the award of the Reference Court, learned counsel appearing for some of the claimants submitted that the Reference Court has correctly appreciated the evidence on hand and arrived the market value at Rs.2,40,000/- on the basis of Exs.B-2, which cannot be interfered with in this appeal.

9.1. It is a settled law that while determining the amount of compensation payable in respect of the lands acquired, the market value therefore indisputably has to be ascertained and the best method would be the amount which a willing purchaser would pay to the owner of the land (vide: UNION OF INDIA v. PRAMOD GUPTA [(2005) 12 SCC 1]. Even though several documents have been cited, the only document taken into consideration by the Reference Court is Ex.B-2, dated 15.9.1978. Ex.B-2 came to be executed about two years and three months prior to the date of 4(1) Notification dated 15.12.1980. It deals with the same survey number from which the lands were acquired. Under Ex.B-2 an extent of 0.24 acre was sold for a sum of Rs.12,000/-, that is to say, the value for an acre was fixed at Rs.50,000/-.

9.2. It is true that the market value per acre would come to Rs.50,000/- as per Ex.B-2, but the oral evidence of P.Ws.1 and 3, namely, seller and purchaser, would go to show that the purchaser was a cultivating tenant as well as a servant under the seller and hence, the land was sold at a lesser price under Ex.B-2. Further, for the purpose of stamp duty, the land was valued at Rs.1,00,000/- per acre. Therefore, the sale consideration as found in Ex.B-2 would not reflect the amount which a willing purchaser would pay, in view of the relationship between the seller and the purchaser and hence, we are of the considered view that the Reference Court was correct in disagreeing with the value mentioned in Ex.B-2.

9.3. The Reference Court, to arrive at the market value of the lands in question, took note of the sale deed in Item No.20 of the list of documents submitted by the Government. In the sale deed dated 23.3.1979, the market value was shown as Rs.3,03,200/- per acre. The sale deed dated 23.3.1979 dealt with a small extent of land and hence, the same was not taken for fixing the market value of the lands acquired, but the said sale deed formed the basis for the Reference Court to fix the market value at Rs.3,00,000/- per acre. The Reference Court found that the property covered in the sale deed dated 23.3.1979 was a land without water and

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situated at an elevated place and even if such a property fetched a sum of Rs.3,03,200/- per acre on 23.3.1979, the lands acquired would fetch at least a sum of Rs.3,00,000/- per acre. The finding of the Reference Court, in our view, cannot be said to be unreasonable.

10.1. Further, at the time of hearing, we directed the learned Additional Government Pleader to produce documents which are nearer in date as well as place to the lands acquired, so as to arrive at a just compensation. Accordingly, he took out an application in C.M.P.No.9108 of 2006 seeking permission to mark a copy of sale deed dated 27.2.1980, and the said application was ordered as the other side had no objection and the said document was marked as Ex.B-39.

10.2. A perusal of Ex.B-39, namely, the sale deed executed between one Thirumalai Chettiar and one Uthamchand Kataria in respect of Survey No.2098 of Udhagamandalam. The sale deed covers an extent of 0.01 acres of land and building thereon. The market value is shown to be Rs.3,000/- per cent.

10.3. Relying on Ex.B-39 sale deed, learned Additional Government Advocate contended that the sale under Ex.B-39 relates to a small extent of land and for that, 25% of the value has to be deducted and towards development of land, another 25% has to be deducted and if so calculated, the market value of the property would come to Rs.1,50,000/- per acre. The contention of the learned Additional Government Pleader appears to be not correct. Because, under Ex.B-39 a small extent of land that too, with a building was sold. Further, it is not the case of the appellant that the land under Ex.B-39 is very close to the lands acquired. Even accepting the sale deed in Ex.B-39, it would not in any way help the appellant, as, in the sale deed itself, the land was sold at Rs.3,000/- per cent and there is no basis for deducting 25% towards small extent of land and another 25% towards development of land, as claimed by the learned Additional Government Pleader.

11. On the other hand, the land under Ex.B-2 is situate in the same survey number from which the lands were acquired. It is true that Ex.B-2 is dated 18.9.1978, that is about 2 years and 3 months prior to the date of 4(1) notification. But, the Reference Court fixed the market value by making an addition of 10% for each subsequent year and after deducting 1/3rd thereof towards development charges. As already observed by us, the Reference Court has correctly assumed the market value at Rs.3,00,000/- per acre on the basis of document in Item No.20 in the list and then, fixed the market value of the lands acquired at Rs.2,40,000/- in the above manner.

12. Learned Additional Government Pleader has not advanced any arguments against the compensation for trees and standing crops and hence, the award of the Reference Court regarding trees and standing crops also stands.

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In view of our above discussion, we find no reason to interfere with the award of the Reference Court. Accordingly, the appeal is dismissed confirming the order of the Reference Court. No costs. Connected C.M.Ps. are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The District Judge,
Uthagamandalam.

2. The Record Keeper,
V.R.Section,
High Court, Madras.

1 cc To Mr.G.Muniratnam, Advocate, SR.36276.
1 cc To Mr.Venkateseshan, Advocate, SR.36332.
1 cc To Mr.S.K.Rakhunathan, Advocate, SR.36421.

A.S.No.237 of 1997

GM(CO)
RVL 25.09.2006

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